

**CONFIDENTIALITY AGREEMENT AMONG THE UNITED STATES,  
XCEL ENERGY, AND THE CITY OF ASHLAND  
FOR SETTLEMENT NEGOTIATIONS REGARDING THE  
ASHLAND/NORTHERN STATES POWER LAKEFRONT SUPERFUND SITE**

This Confidentiality Agreement (“Agreement”) is made by and between the United States of America (“the United States”), Xcel Energy (“Xcel”), and the City of Ashland (“City”) (collectively, the “Participants”).

WHEREAS, the United States, acting on behalf of the United States Environmental Protection Agency, contends it may have claims against Xcel and the City under the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter the “Subject Claims”).

WHEREAS, the Participants wish to avoid unnecessary litigation, and promote opportunities for settlement or compromise of the Subject Claims prior to initiation of litigation.

WHEREAS, the Participants recognize that meaningful settlement negotiations will require exchanges of information and opinions, offers of settlement or compromise, and other communications among them.

WHEREAS, the Participants agree that maintaining the confidentiality of Settlement Communications (as defined herein) would generally facilitate the free exchange of information and enhance the likelihood of a successful outcome.

ACCORDINGLY, the Participants wish to provide for the confidentiality of Settlement Communications to the extent provided by, and in accordance with, the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual benefits described above and the mutual covenants contained herein, the Participants agree as follows:

1. For purposes of this Agreement, “Settlement Communications” means: (a) oral

settlement discussions among the Participants concerning the Subject Claims and (b) materials in written or electronic form that are: (i) prepared for purposes of settlement negotiations with respect to the Subject Claims, (ii) exchanged by and among the Participants in settlement negotiations with respect to the Subject Claims, and (iii) labeled in accordance with Paragraph 3.

2. The Participants are, and this Agreement is binding upon, the United States, Xcel, and the City, and each entity's officers, directors, agents, servants, employees, and attorneys.

3. All written or electronic materials that a Participant wishes to have treated as Settlement Communications under this Agreement shall be conspicuously labeled "Settlement Communication - Subject to Confidentiality Agreement" at the time of the exchange. In addition, written or electronic materials exchanged prior to the effective date of this Agreement shall be treated as Settlement Communications pursuant to this Agreement so long as they are conspicuously labeled as "Confidential" or otherwise protected based on their status as "Settlement" materials. In either case, the other Participants may dispute, either at the time of designation or later, that the written or electronic material is a Settlement Communication within the meaning of this Agreement.

4. Any trade secrets or other commercial or financial information provided to the United States by Xcel or the City that the providing party wishes to protect as Confidential Business Information shall be provided and managed in accordance with 40 C.F.R. Part 2. To the extent that such information is also a Settlement Communication under this Agreement, such information also shall be handled in accordance with this Agreement.

5. The Participants agree that, except as otherwise provided in this Agreement, they will keep Settlement Communications confidential and not disclose them to persons or entities not party to this Agreement, except as required by law, court order, or other lawful process. The

Participants further agree to take all necessary and appropriate measures to maintain the confidentiality of Settlement Communications and to retain written or electronic materials in a secure manner.

6. A representative of a Participant who obtains Settlement Communications under this Agreement may share such information with those attorneys or employees of a Participant who in the opinion of such Participant are responsible for these settlement negotiations or for whom such information relates to their official duties. A representative of a Participant who obtains Settlement Communications under this Agreement also may share such information with those consultants and experts of the Participant who are assisting in the negotiations and who, in the opinion of such Participant require access, provided that any person with whom such information is shared is specifically made aware of, and, prior to receiving the information, agrees in writing to be bound by, the provisions of this Agreement as if he/she were a Participant.

7. Any Settlement Communication subject to this Agreement may be disclosed to a third person when the provider of the Settlement Communication has given express written permission prior to such disclosure.

8. Information otherwise admissible, discoverable, or subject to subpoena in any proceeding shall not be rendered inadmissible, non-discoverable, or not subject to subpoena because of its use in these negotiations. Further, this Confidentiality Agreement shall not be construed to prohibit the disclosure of oral communications or written or electronic material already lawfully in the public domain, or developed or existing independent of the Participant's negotiation of the Subject Claims.

9. In the event that a Participant concludes in good faith that applicable law, a subpoena, or other lawful process, or a court order, requires disclosure of Settlement Communications to a

third party, such Participant shall provide, as far as is practicable, advance written notice to the other Participant(s) of the intent to disclose, including a description of the applicable law or a copy of the subpoena, process, or order requiring disclosure. A Participant shall not disclose any Settlement Communication sooner than 21 days following provision of such written notice, unless required by law or order of a court.

10. Any disclosure of Settlement Communications in contravention of this Agreement shall not result in a waiver of any Participant's claim of confidentiality, except as provided by law.

11. Nothing in this Agreement shall be construed to limit the full application of Fed. R. Evid. 408 to Settlement Communications.

12. Nothing in this Agreement shall be construed to prejudice or limit the right of the United States to take any action to enforce the laws of the United States or to protect public health, safety, welfare, or the environment. Further, nothing in this Agreement shall be construed to limit the United States from complying with the requirements or established government policies of public participation regarding settlement agreements.

13. Any Participant may terminate its participation in this Agreement by notifying the other Participants in writing of its intention to terminate its participation in this Agreement at least 21 days in advance of such termination; provided, however, that the confidentiality and notice obligations imposed under this Agreement shall remain in full force and effect, without regard to whether a Participant has terminated its participation in this Agreement, with respect to all Settlement Communications made or exchanged prior to the date of termination.

14. This Agreement contains the entire agreement among the Participants regarding the confidentiality of Settlement Communications between among the Participants, and no

statements, promises, or inducements made by any Participant that are not contained herein shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in a writing signed by the Participants.

15. Notwithstanding any other provision in this Agreement, this Agreement shall be admissible in any future administrative or judicial proceeding to prove its terms and conditions.

16. The undersigned representative of each Participant certifies that he or she is authorized to enter into this Agreement and to execute for and bind the Participant whom he or she represents.

17. The Effective Date of this Agreement shall be the date that it is signed by all Participants.

**Signatures.**